

House Bill 880

By: Representatives Cox of the 102nd and Williams of the 165th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to abandoned motor vehicles, so as to define relevant terms; to provide for possessory liens on vehicles and their contents; to provide for towing and storage of vehicles; to provide for notice of abandonment; to provide notice of redemption; to provide for duties of law enforcement officers; to enumerate appropriate towing and storage fees; to provide for the sale of abandoned vehicles; to provide for lien foreclosure; to provide for hearings in magistrate court; to provide for derelict motor vehicles; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 11 of Title 40 of the Official Code of Georgia Annotated, relating to abandoned motor vehicles, is amended by striking Article 1, relating to abandoned motor vehicles generally, and inserting in its place the following:

"ARTICLE 1

40-11-1.

As used in this article, the term:

(1) 'Abandoned motor vehicle' means a motor vehicle or trailer and its contents:

(A) Which has been left by the owner or some person acting for the owner with an automobile dealer, ~~repairman, or wrecker service~~ or any automobile repair facility for repair or for some other reason and has not been called for by such owner or other person within a period of 30 days after the time agreed upon; or within 30 days after such vehicle is turned over to such dealer, ~~repairman, or wrecker service~~ or automobile

1 repair facility when no time is agreed upon; or within 30 days after the completion of
2 necessary repairs;

3 ~~(B) Which is left unattended on a public street, road, or highway or other public~~
4 ~~property for a period of at least five days and when it reasonably appears to a law~~
5 ~~enforcement officer that the individual who left such motor vehicle unattended does not~~
6 ~~intend to return and remove such motor vehicle. However, on the state highway system,~~
7 ~~any law enforcement officer or employee of the Department of Motor Vehicle Safety~~
8 ~~to whom enforcement authority has been designated pursuant to Code Section 40-16-4~~
9 ~~may authorize the immediate removal of vehicles posing a threat to public health or~~
10 ~~safety or to mitigate congestion~~ has been left by the owner or some person acting for
11 the owner with a towing and storage facility for a period of not less than 30 days
12 without anyone having paid all reasonable current charges for such towing and storage;

13 (C) Which has been lawfully towed ~~onto the property of another~~ to an automotive
14 storage facility at the request of a law enforcement officer and left there for a period of
15 not less than 30 days without anyone having paid all reasonable current charges for
16 such towing and storage; or

17 (D) Which has been lawfully towed ~~onto the property of another~~ from private property
18 to an automotive storage facility at the request of a property owner ~~on whose property~~
19 ~~the vehicle was abandoned~~ or person acting for the property owner under the provisions
20 set forth in Code Section 44-1-13 and left there for a period of not less than 30 days
21 without anyone having paid all reasonable current charges for such towing and storage;
22 or

23 ~~(E) Which has been left unattended on private property for a period of not less than 30~~
24 ~~days.~~

25 (2) 'Derelict vehicle' means any motor vehicle that meets the criteria for determining a
26 derelict motor vehicle as prescribed in Code Section 40-11-6.

27 ~~(2)(3)~~ (3) 'Motor vehicle' or 'vehicle' means a motor vehicle or trailer and its contents.

28 ~~(3)(4)~~ (4) 'Owner' or 'owners' means the registered owner, the owner as recorded on the title,
29 lessor, lessee, security interest holders, and all lienholders as shown on the records of the
30 Department of Motor Vehicle Safety or the records from the vehicle's state of
31 registration.

32 40-11-2.

33 (a) Any person ~~who removes a motor vehicle from public property at the request of a law~~
34 ~~enforcement officer or stores such vehicle shall, if the owner of the vehicle or some person~~
35 ~~acting for the owner is not present, seek the identity of and address of all known owners~~

1 of such vehicle from the law enforcement officer requesting removal of such, from such
2 officer's agency, or from a local law enforcement agency for the jurisdiction in which the
3 remover's or storer's place of business is located, within three business days of removal.
4 The local law enforcement agency shall furnish such information to the person removing
5 such vehicle within three business days after receipt of such request or facility who legally
6 tows, transports, or stores any motor vehicle shall have a possessory lien on the vehicle.
7 The lien shall remain in effect while the motor vehicle is in the possession of the person
8 or facility and is limited to reasonable towing and storage fees, plus notification,
9 advertisement, or disposal costs where applicable. Such lien shall include vehicle contents
10 with the following exceptions: prescription drugs or eyewear, child passenger restraining
11 system, house keys, and personal documentation such as birth or death records. This lien
12 attaches when the person or facility acts:

13 (1) Under a contract with the owner or someone representing the owner;

14 (2) At the direction of a law enforcement officer; or

15 (3) At the direction of an owner or lessor, or a person authorized by the owner or lessor,
16 of private property on which such vehicle is wrongfully located, and the vehicle was
17 removed in accordance with Code Section 44-1-13.

18 (b) Any person or facility who ~~removes~~ stores a motor vehicle that was removed from
19 public or private property at the request of the property owner or stores such vehicle shall,
20 if the owner of the vehicle or some person acting for the owner is not present, someone
21 other than the vehicle owner or some person acting for the owner shall notify in writing a
22 local law enforcement agency of the location of the vehicle, the manufacturer's vehicle
23 identification number, license number, model, year, and make of the vehicle within three
24 business days of the removal of such vehicle and shall seek from the local law enforcement
25 agency the identity and address of all known owners of such vehicle, and any information
26 indicating that such vehicle is a stolen motor vehicle. The local law enforcement agency
27 shall furnish such information to the person ~~removing~~ or facility storing such vehicle within
28 three business days after receipt of such request.

29 (c) If any motor vehicle removed under conditions set forth in subsection (a) ~~or~~ (b) of this
30 Code section is determined to be a stolen motor vehicle, the local law enforcement officer
31 or agency shall immediately notify the storage facility of such determination, and provide
32 to such storage facility the names and addresses of all owners, if ascertainable, and shall
33 further notify the Georgia Crime Information Center of the location of such motor vehicle
34 within 72 hours after receiving notice that such motor vehicle is a stolen vehicle.

35 (d) When If any motor vehicle is removed under conditions set forth in subsection (a)
36 ~~or (b) of this Code section is determined not to be a stolen vehicle or is not a vehicle being~~

1 ~~repaired by a repair facility or is not being stored by an insurance company providing~~
2 ~~insurance to cover damages to the vehicle, the person removing or facility storing such~~
3 ~~motor vehicle shall, within seven ~~calendar~~ business days of the day such motor vehicle was~~
4 ~~removed or one business day after the information is furnished to the ~~remover~~ or storer~~
5 ~~pursuant to subsection (a) or (b) of this Code section, whichever is later, notify all owners,~~
6 ~~if known, by written acknowledgment signed thereby or by certified or registered mail or~~
7 ~~statutory overnight delivery, of the location of such motor vehicle, the fees connected with~~
8 ~~removal and storage of such motor vehicle, and the fact that such motor vehicle will be~~
9 ~~deemed abandoned under this chapter unless the owner, security interest holder, or~~
10 ~~lienholder redeems such motor vehicle within 30 days of the day such vehicle was~~
11 ~~removed. Further, such notification shall not be required if the vehicle is being repaired~~
12 ~~by a repair facility or being stored at the request of the vehicle owner or someone acting~~
13 ~~for the owner or an insurance company that is providing insurance to cover damages to the~~
14 ~~vehicle.~~

15 (e) If none of the owners redeems such motor vehicle as described in subsection (d) of this
16 Code section, or if a vehicle being repaired by a repair facility or being stored at the request
17 of the vehicle owner or someone acting for the owner or by an insurance company that is
18 providing insurance to cover damages to the vehicle becomes abandoned, the person
19 ~~removing or facility storing such motor vehicle shall, within seven ~~calendar~~ business days~~
20 ~~of the day such vehicle became an abandoned motor vehicle, give notice in writing, by~~
21 ~~sworn statement, on the form prescribed by the commissioner, or via direct electronic~~
22 ~~access as provided by the Department of Motor Vehicle Safety, to the Department of Motor~~
23 ~~Vehicle Safety with a research fee of \$2.00 payable to the Department of Motor Vehicle~~
24 ~~Safety, stating the manufacturer's vehicle identification number, the license number, the~~
25 ~~fact that such vehicle is an abandoned motor vehicle, the model, year, and make of the~~
26 ~~vehicle, the date the vehicle became an abandoned motor vehicle, the date the vehicle was~~
27 ~~removed, and the present location of such vehicle and requesting the name and address of~~
28 ~~all owners of such vehicle. If the form submitted is rejected because of inaccurate or~~
29 ~~missing information, the person removing or storing the vehicle shall resubmit, within~~
30 ~~seven calendar days of the date of the rejection, a corrected notice form together with an~~
31 ~~additional research fee of \$2.00 payable to the Department of Motor Vehicle Safety. Each~~
32 ~~subsequent corrected notice, if required, shall be submitted with an additional research fee~~
33 ~~of \$2.00 payable to the Department of Motor Vehicle Safety. If a person removing or~~
34 ~~storing the vehicle has knowledge of facts which reasonably indicate that the vehicle is~~
35 ~~registered or titled in a certain other state, such person If the vehicle displays registration~~
36 ~~from another state, then the person or facility storing such vehicle shall check the motor~~

1 vehicle records of that other state in the attempt to ascertain the identity of the owner of the
2 vehicle. Research requests may be submitted and research fees made payable to the office
3 of the tax commissioner and deposited in the general fund for the county in which the
4 ~~remover's or~~ storer's place of business is located in lieu of the Department of Motor
5 Vehicle Safety, but in like manner, if such office processes motor vehicle records of the
6 Department of Motor Vehicle Safety.

7 (f) Upon ascertaining the owners of such motor vehicle, the person ~~removing~~ or facility
8 storing such vehicle shall, within five ~~calendar~~ business days, by certified or registered mail
9 or statutory overnight delivery, notify all known owners of the vehicle of the location of
10 such vehicle and of the fact that such vehicle is deemed abandoned and shall be disposed
11 of if not redeemed and make a demand for the payment of all applicable fees including
12 repairs, towing, storage, and the costs of any advertisement and notification. Such written
13 demand shall be an itemized statement of all charges on a form prescribed by the
14 Department of Motor Vehicle Safety which shall include the phrase 'Notice of Impending
15 Sale of Abandoned Motor Vehicle and Right to a Public Hearing.' No such notice or
16 written demand shall be required if, after a good faith effort, the identity of the owner
17 cannot be ascertained.

18 (g) If the identity of the owners of such motor vehicle cannot be ascertained, the person
19 ~~removing~~ or facility storing such vehicle shall place an advertisement in a newspaper of
20 general circulation in the county where such vehicle was obtained or, if there is no
21 newspaper in such county, shall post such advertisement at the county courthouse in such
22 place where other public notices are posted. Such advertisement shall run in the newspaper
23 once a week for two consecutive weeks or shall remain posted at the courthouse for two
24 consecutive weeks. The advertisement shall contain a complete description of the motor
25 vehicle, its license and manufacturer's vehicle identification numbers, the location from
26 where such vehicle was initially removed, the present location of such vehicle, and the fact
27 that such vehicle is deemed abandoned and shall be disposed of if not redeemed.

28 (h) The Department of Motor Vehicle Safety shall provide to the Georgia Crime
29 Information Center all relevant information from sworn statements described in
30 subsection (e) of this Code section for a determination of whether the vehicles removed
31 have been entered into the criminal justice information system as stolen vehicles. The
32 results of the determination shall be provided electronically to the Department of Motor
33 Vehicle Safety and to the person or facility storing such vehicle.

34 (i) Any person or facility storing a vehicle under the provisions of this Code section shall
35 notify the Department of Motor Vehicle Safety if the vehicle is recovered, is claimed by

the owner, is determined to be stolen, or for any reason is no longer an abandoned motor vehicle. Such notice shall be provided within seven ~~calendar~~ business days of such event.

(j) If vehicle information on the abandoned motor vehicle is not in the files of the Department of Motor Vehicle Safety, the department may require such other information or confirmation as it determines is necessary or appropriate to determine the identity of the vehicle.

(k) Any person or facility who does not provide the notice and information required by this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor, ~~shall not be entitled to any storage fees~~, shall not be eligible to contract with or serve on a rotation list providing wrecker services for this state or any political subdivision thereof, and shall not be licensed by any municipal authority to provide removal of improperly parked cars under Code Section 44-1-13 for six months and until legal disposition of all abandoned vehicles in the person's or facility's possession.

(l) Any person or facility who knowingly provides false or misleading information when providing any notice or information as required by this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor.

40-11-3.

(a) Any peace officer who finds a motor vehicle which has been left unattended on a public street, road, or highway or other public property for a period of at least ~~five~~ two days shall be authorized to cause such motor vehicle to be removed to ~~a garage or other place of safety, if such peace officer reasonably believes that the person who left such motor vehicle unattended does not intend to return and remove such motor vehicle~~ an automotive storage facility.

(b) Any law enforcement officer or employee of the Department of Motor Vehicle Safety to whom law enforcement authority has been designated pursuant to Code Section 40-16-4 who finds a motor vehicle which has been left unattended on the state highway system shall be authorized to cause such motor vehicle to be removed immediately to ~~a garage or other place of safety~~ an automotive storage facility when such motor vehicle poses a threat to public health or safety or to mitigate congestion. Any peace officer who finds a motor vehicle which has been left unattended on a public street, road, or highway or other public property, other than the state highway system, shall be authorized immediately to cause such motor vehicle to be removed immediately to ~~a garage or other place of safety~~ an automotive storage facility when such motor vehicle poses a threat to public health or safety or to mitigate congestion.

(c) Any peace officer who, under this Code section, causes any motor vehicle to be removed to a garage or other place of safety an automotive storage facility shall be liable for gross negligence only.

~~(d)(1) Any peace officer or the law enforcement agency which causes a motor vehicle to be removed to a garage or other place of safety or which is notified of the removal of a motor vehicle from private property shall within 72 hours from the time of removal or notice and if the owner is unknown attempt to determine vehicle ownership through official inquiries to the Department of Motor Vehicle Safety vehicle registration and vehicle title files. These inquiries shall be made from authorized criminal justice information system network terminals.~~

~~(2) If the name and address of the last known registered owner of the motor vehicle is obtained from the Georgia Crime Information Center, the peace officer who causes the motor vehicle to be removed shall, within three calendar days, make available to the person removing such motor vehicle the name and address of the last known registered owner of such motor vehicle, the owner of the motor vehicle as recorded on the title of such vehicle, and all security interest holders or lienholders. If such information is not available, the peace officer shall, within three calendar days, notify the person removing or storing such vehicle of such fact.~~

~~(3) Law enforcement agencies shall make record entries in Georgia criminal justice information system files through authorized criminal justice information system network terminals after an unsuccessful attempt to obtain vehicle ownership information and shall remove the record entries when ownership is determined.~~

40-11-3.1.

(a) It shall be the duty of any peace officer who discovers a motor vehicle which has been left unattended on a public street, road, or highway or other public property to immediately perform an unattended vehicle check on such motor vehicle, unless there is displayed on such motor vehicle an unattended vehicle check card indicating that another peace officer has already performed such an unattended vehicle check. For purposes of this Code section, an unattended vehicle check shall consist of such actions as are reasonably necessary to determine that the unattended vehicle does not contain an injured or incapacitated person and to determine that the unattended vehicle does not pose a threat to public health or safety.

(b) A peace officer completing an unattended vehicle check shall complete and attach to the vehicle an unattended vehicle check card. Unattended vehicle check cards shall be in such form, and shall be attached to vehicles in such manner, as may be specified by rule

1 or regulation of the Department of Public Safety; and to the extent that sufficient funds are
2 available to the department, the department may distribute such forms free of charge to law
3 enforcement agencies in this state. Unattended vehicle check cards shall be serially
4 numbered; shall be of a distinctive color and shape, so as to be readily visible to passing
5 motorists; and shall contain spaces for the investigating police officer to indicate the
6 location of the vehicle, the date and time of the completion of the unattended vehicle check,
7 and the name of such peace officer's law enforcement agency. A detachable stub, which
8 shall be filed with the investigating peace officer's law enforcement agency, shall bear the
9 same serial number and shall contain the same information, together with the identity of
10 the investigating peace officer and the license plate number and other pertinent identifying
11 information relating to the abandoned vehicle.

12 (c) Nothing in the Code section shall limit the otherwise applicable authority of a peace
13 officer to have an unattended motor vehicle removed to ~~a garage or other place of safety~~
14 an automotive storage facility.

15 (d) It shall be unlawful for any person other than a peace officer to attach a genuine or
16 counterfeit unattended motor vehicle check card to a motor vehicle; and any person
17 convicted of violating this subsection shall be guilty of a misdemeanor.

18 ~~40-11-3.2.~~

19 ~~(a) It shall be unlawful for the owner or operator of a paid private parking lot or paid~~
20 ~~private parking facility located within 500 feet of an establishment which serves alcoholic~~
21 ~~beverages for consumption on the premises to remove, tow, or immobilize or cause to be~~
22 ~~removed, towed, or immobilized a motor vehicle left in such lot or facility between~~
23 ~~midnight and noon of the following day. Nothing in this Code section shall prohibit the~~
24 ~~owner of such a parking lot or facility from charging a penalty not to exceed \$25.00 in~~
25 ~~excess of normal parking fees for vehicles which remain on the property during such period~~
26 ~~without authorization. No owner or operator of such a parking lot or facility shall be liable~~
27 ~~for any damages to any motor vehicle remaining on the property during such period without~~
28 ~~authorization. Nothing in this Code section shall prohibit a resident or a business owner~~
29 ~~from towing or removing or causing to be towed or removed a motor vehicle left on private~~
30 ~~property. For purposes of this subsection, the terms 'paid private parking lot' and 'paid~~
31 ~~private parking facility' mean private parking lots where the owner or operator of a motor~~
32 ~~vehicle pays a valuable consideration for the right to park in such parking lot or parking~~
33 ~~facility.~~

34 ~~(b) Any person violating the provisions of subsection (a) of this Code section shall be~~
35 ~~guilty of a misdemeanor.~~

1 40-11-4.

2 (a) ~~Any person who removes or stores any motor vehicle which is or becomes an~~
3 ~~abandoned motor vehicle shall have a lien on such vehicle for the reasonable fees~~
4 ~~connected with such removal or storage plus the cost of any notification or advertisement.~~
5 ~~Such lien shall exist if the person moving or storing such vehicle is in compliance with~~
6 ~~Code Section 40-11-2. Liens acquired under subsection (a) of Code Section 40-11-2 by a~~
7 ~~towing and storage facility shall be limited to towing and storage charges plus the cost of~~
8 ~~notification and disposal, provided that storage fees shall be allowable only up to the date~~
9 ~~of the disposal and are limited to no more than one calendar year.~~

10 (b) ~~The lien acquired under subsection (a) of this Code section may be foreclosed in any~~
11 ~~court which is competent to hear civil cases, including, but not limited to, magistrate courts.~~
12 ~~Liens shall be foreclosed in magistrate courts only when the amount of the lien does not~~
13 ~~exceed the jurisdictional limits established by law for such courts. If, within ten days of~~
14 ~~delivery to the appropriate address of the notification and written demand required by~~
15 ~~subsection (f) of Code Section 40-11-2, or ten days after the last advertisement required by~~
16 ~~subsection (g) of Code Section 40-11-2 if the owner is unknown, an owner of the~~
17 ~~abandoned vehicle files a petition for a probable cause hearing with a court of competent~~
18 ~~jurisdiction in the county in which the vehicle is located, and pays the appropriate filing~~
19 ~~fees, the court shall set such a hearing within ten days of the filing of the petition and shall~~
20 ~~notify the person or facility storing the abandoned vehicle by certified or registered mail~~
21 ~~or sheriff's service. In such cases, the abandoned vehicle shall be disposed of in~~
22 ~~accordance with the provisions of Code Section 40-11-5.~~

23 (c) ~~If, within ten days of delivery to the appropriate address of the notification and written~~
24 ~~demand required by subsection (f) of Code Section 40-11-2, or ten days after the last~~
25 ~~advertisement required by subsection (g) of Code Section 40-11-2 if the owner is unknown,~~
26 ~~the owner of the abandoned vehicle fails to respond by paying all charges and taking~~
27 ~~possession of the vehicle or by filing a petition for a probable cause hearing in the required~~
28 ~~time as provided in subsection (b) of this Code section, and the vehicle is more than five~~
29 ~~calendar years old as determined by the vehicle identification number, the person or facility~~
30 ~~storing the abandoned vehicle shall be authorized to sell such vehicle free and clear of all~~
31 ~~liens and encumbrances at public sale, in accordance with Code Section 11-1-201.~~

32 (d) ~~Upon sale of the vehicle, the person or facility selling such motor vehicle shall provide~~
33 ~~the purchaser:~~

34 ~~(1) A bill of sale on a form prescribed by the Department of Motor Vehicle Safety;~~

35 ~~(2) A copy of the demand notification required by subsection (f) of Code Section~~
36 ~~40-11-2;~~

1 (3) Proof of delivery of such notification to the vehicle owner; and

2 (4) A copy of the advertisement of public sale in the local newspaper or other
3 publication.

4 (e) Not later than 30 days after the date of such sale, the person or facility selling such
5 motor vehicle shall submit to the Department of Motor Vehicle Safety a copy of the bill of
6 sale as provided to the purchaser. Any proceeds of such sale, less all towing and storage
7 fees and the costs of notification, advertising, and disposal, shall be retained by the towing
8 and storage facility for six months from the date of sale subject to the claim of the owner
9 of the vehicle. If, after six months, such proceeds remain unclaimed, the towing and
10 storage facility shall submit 25 percent of said proceeds to the Department of Motor
11 Vehicle Safety, with the remaining 75 percent belonging to the towing and storage facility.

12 40-11-5.

13 ~~All liens acquired under Code Section 40-11-4 shall be foreclosed as follows:~~

14 ~~(1) Any proceeding to foreclose a lien on an abandoned motor vehicle must be instituted~~
15 ~~within one year from the time the lien is recorded or is asserted by retention;~~

16 ~~(2) The person desiring to foreclose a lien on an abandoned motor vehicle shall, by~~
17 ~~certified or registered mail or statutory overnight delivery, make a demand upon the~~
18 ~~owners for the payment of the reasonable fees for removal and storage plus the costs of~~
19 ~~any notification or advertisement. Such written demand shall include an itemized~~
20 ~~statement of all charges and may be made concurrent with the notice required by~~
21 ~~subsection (f) of Code Section 40-11-2. Such demand shall be made on a form prescribed~~
22 ~~by rule or regulation of the Department of Motor Vehicle Safety and shall notify the~~
23 ~~owner of his or her right to a judicial hearing to determine the validity of the lien. The~~
24 ~~demand shall further state that failure to return the written demand to the lien claimant,~~
25 ~~file with a court of competent jurisdiction a petition for a judicial hearing, and provide~~
26 ~~the lien claimant with a copy of such petition, all within ten days of delivery of the lien~~
27 ~~claimant's written demand, shall effect a waiver of the owner's right to such a hearing~~
28 ~~prior to sale. The form shall also provide the suspected owner with the option of~~
29 ~~disclaiming any ownership of the vehicle, and his or her affidavit to that effect shall~~
30 ~~control over anything contrary in the records of the Department of Motor Vehicle Safety.~~
31 ~~No such written demand shall be required if the identity of the owner cannot be~~
32 ~~ascertained and the notice requirements of subsection (g) of Code Section 40-11-2 have~~
33 ~~been complied with;~~

34 ~~(3)(A) If, within ten days of delivery to the appropriate address of the written demand~~
35 ~~required by paragraph (2) of this Code section, the owner of the abandoned motor~~

1 ~~vehicle fails to pay or file with the court a petition for a judicial hearing with a copy to~~
2 ~~the lien claimant in accordance with the notice provided pursuant to paragraph (2) of~~
3 ~~this Code section, or if the owner of the abandoned motor vehicle cannot be~~
4 ~~ascertained, the person removing or storing the abandoned motor vehicle may foreclose~~
5 ~~such lien. The person asserting such lien may move to foreclose by making an affidavit~~
6 ~~to a court of competent jurisdiction, on a form prescribed by rule or regulation of the~~
7 ~~Department of Motor Vehicle Safety, showing all facts necessary to constitute such lien~~
8 ~~and the amount claimed to be due. Such affidavit shall aver that the notice~~
9 ~~requirements of Code Section 40-11-2 have been complied with, and such affidavit~~
10 ~~shall also aver that a demand for payment in accordance with paragraph (2) of this Code~~
11 ~~section has been made without satisfaction or without a timely filing of a petition for~~
12 ~~a judicial hearing or that the identity of the owner cannot be ascertained. The person~~
13 ~~foreclosing shall verify the statement by oath or affirmation and shall affix his or her~~
14 ~~signature thereto.~~

15 ~~(B) Regardless of the court in which the affidavit required by this paragraph is filed,~~
16 ~~the fee for filing such affidavit shall be \$10.00 per motor vehicle upon which a lien is~~
17 ~~asserted;~~

18 ~~(4) If no timely petition for a hearing has been filed with a court of competent~~
19 ~~jurisdiction, then, upon such affidavit's being filed by the lien claimant pursuant to~~
20 ~~paragraph (3) of this Code section, the lien will conclusively be deemed a valid one and~~
21 ~~foreclosure thereof allowed;~~

22 ~~(5) If a petition for a hearing is filed with a court of competent jurisdiction within ten~~
23 ~~days after delivery of the lien claimant's demand, a copy of which demand shall be~~
24 ~~attached to the petition, the court shall set such a hearing within ten days of filing of the~~
25 ~~petition;~~

26 ~~(6) Upon the filing of such petition by an owner, neither the lien claimant nor the court~~
27 ~~may sell the motor vehicle, although possession of the motor vehicle may be retained by~~
28 ~~the lien claimant or obtained by the court in accordance with the order of the court which~~
29 ~~sets the date for the hearing;~~

30 ~~(7) If, after a full hearing, the court finds that a valid debt exists, then the court shall~~
31 ~~authorize foreclosure upon and sale of the motor vehicle subject to the lien to satisfy the~~
32 ~~debt if such debt is not otherwise immediately paid;~~

33 ~~(8) If the court finds the actions of the person asserting the lien in retaining possession~~
34 ~~of the motor vehicle were not taken in good faith, then the court, in its discretion, may~~
35 ~~award damages to the owner, any party which has been deprived of the rightful use of the~~
36 ~~vehicle, or the lessee due to the deprivation of the use of the motor vehicle; and~~

~~(9) If an affidavit meeting the requirements of paragraph (3) of this Code section is filed and no petition for a hearing is timely filed, or if, after a full hearing, the court determines that a valid debt exists, the court shall issue an order authorizing the sale of such motor vehicle. However, the holder of a security interest in or a lien on the vehicle, other than the holder of a lien created by Code Section 40-11-4, shall have the right, in the order of priority of such security interest or lien, to pay the debt and court costs. If the holder of a security interest or lien does so pay the debt and court costs, he or she shall have the right to possession of the vehicle, and his or her security interest in or lien on such vehicle shall be increased by the amount so paid. A court order shall be issued to this effect, and in this instance there shall not be a sale of the vehicle.~~

(a) Liens acquired under subsection (a) of Code Section 40-11-2 by a towing and storage facility on a vehicle five calendar years old or less as determined by the vehicle identification number or by an automotive repair facility shall be foreclosed as follows:

(1) Any proceeding to foreclose a lien under this Code section must be instituted within one year from the time such vehicle became abandoned;

(2) If, within ten days of delivery to the appropriate address of the notification and written demand required by subsection (f) of Code Section 40-11-2, the owner of the abandoned vehicle fails to respond to pay all charges and take possession of the vehicle, or ten days after the last advertisement required by subsection (g) of Code Section 40-11-2 if the owner is unknown, the person or facility storing the abandoned vehicle may move to foreclose by making an affidavit to a court of competent jurisdiction, including, but not limited to, magistrate courts. Liens shall be foreclosed in magistrate courts only when the amount of the lien does not exceed the jurisdictional limits established by law for such courts. Such affidavit shall show all facts necessary to constitute such lien and the amount claimed to be due. Such affidavit shall aver that the notice requirements of subsection (f) or (g) of Code Section 40-11-2 have been complied with, and such affidavit shall also aver that a demand for payment has been made and refused or that the identity of the owner cannot be ascertained. The person foreclosing shall verify the statement by oath or affirmation and shall affix his or her signature thereto;

(3) The filing fee for such affidavit shall be the current regular fee of the court in which the affidavit is filed;

(4) Upon such affidavit's being filed, the lien claimant shall give the clerk or judge of the court the address, if known, of the owner, lessor, lessee, security interest holders, and lienholders of the abandoned vehicle. The clerk or judge of the court shall serve notice upon such owner, lessor, lessee, security interest holders, and lienholders of the

1 abandoned vehicle of a right to a hearing to determine if reasonable cause exists to
2 believe that a valid debt exists; that such hearing must be petitioned for within ten days
3 after receipt of such notice; and that, if no petition for such hearing is filed within the
4 time allowed, the lien will conclusively be deemed a valid one and foreclosure thereof
5 allowed;

6 (5) Any notice required by this Code section shall be by certified mail or statutory
7 overnight delivery, return receipt requested, or, if the owner, lessor, lessee, security
8 interest holder, or lienholder is unknown, by posting such notice at the county courthouse
9 in such place where other public notices are posted;

10 (6) If a petition for a probable cause hearing is filed within the time allowed, the court
11 shall set such a hearing within ten days of filing of the petition. If, at the hearing, the
12 court determines that reasonable cause exists that a valid debt exists, then the person
13 asserting the lien shall retain possession of the vehicle or the court shall obtain possession
14 of the vehicle, as ordered by the court. The owner-debtor may obtain possession of the
15 vehicle by giving bond and security in the amount determined to be probably due and
16 costs of the action;

17 (7) Within five days of the probable cause hearing, a party defendant must petition the
18 court for a full hearing on the validity of the debt if a further determination of the validity
19 of the debt is desired. If no such petition is filed, the lien for the amount determined
20 reasonably due shall conclusively be deemed a valid one and foreclosure thereof allowed.
21 If such a petition is filed, the court shall set a full hearing thereon within 15 days of the
22 filing of the petition. Upon the filing of such petition by a party defendant, neither the
23 prosecuting lienholder nor the court may sell the vehicle, although possession of the
24 vehicle may be retained; and

25 (8) If, after a full hearing, the court finds that a valid debt exists, then the court shall
26 authorize foreclosure upon and sale of the vehicle subject to the lien to satisfy the debt
27 if such debt is not otherwise immediately paid. Such vehicle shall be sold free and clear
28 of all liens and encumbrances at public sale, as defined by Code Section 11-1-201;
29 however, the holder of a security interest in or a lien on the vehicle, other than the holder
30 of a lien created by Code Section 40-11-2, shall have the right, in the order of priority of
31 such security interest or lien, to pay the debt and court costs. If the holder of a security
32 interest or lien does so pay the debt and court costs, such person shall have the right to
33 possession of the vehicle, and that person's security interest in or lien on such vehicle
34 shall be increased by the amount so paid. A court order shall be issued to this effect, and
35 in this instance there shall not be a sale of the vehicle.

1 (b) The person or facility selling such motor vehicle shall, not later than 30 days after the
2 date of such sale, provide the clerk of the court with a copy of the bill of sale as provided
3 to the purchaser and proceeds of such sale, after payment of all repair and storage fees, the
4 costs of notification, advertising, and sale, and court fees, shall be deposited with the clerk
5 of the court. The clerk shall hold such proceeds for 12 months from the date of sale subject
6 to the claim of the owner of the vehicle and shall be entitled to receive 10 percent of the
7 remaining proceeds for the care and disbursement thereof. If, after 12 months, the
8 remaining proceeds remain unclaimed, they shall be disbursed as follows:

9 (1) Seventy-five percent shall be returned to the repair facility or towing and storage
10 facility that initiated the foreclosure; and

11 (2) Twenty-five percent shall be retained by the court for the general fund of the county
12 in which the court is located.

13 (c) If the court finds the person asserting the lien in retaining possession of the vehicle did
14 not act in good faith, then the court, in its discretion, may award damages to the owner or
15 any party which was deprived of the rightful use of the vehicle.

16 ~~40-11-6.~~

17 ~~(a) Upon order of the court, the person holding the lien on the abandoned motor vehicle~~
18 ~~shall be authorized to sell such motor vehicle at public sale, as defined by Code Section~~
19 ~~11-1-201.~~

20 ~~(b) After satisfaction of the lien, the person selling such motor vehicle shall, not later than~~
21 ~~30 days after the date of such sale, provide the clerk of the court with a copy of the bill of~~
22 ~~sale as provided to the purchaser and turn the remaining proceeds of such sale, if any, over~~
23 ~~to the clerk of the court. Any person who fails to comply with the requirements of this~~
24 ~~subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished~~
25 ~~as for a misdemeanor.~~

26 ~~40-11-7.~~

27 ~~The purchaser at a sale as authorized in this article shall receive a certified copy of the~~
28 ~~court order authorizing such sale. Any such purchaser may obtain a certificate of title to~~
29 ~~such motor vehicle by filing the required application, paying the required fees, and filing~~
30 ~~a certified copy of the order of the court with the Department of Motor Vehicle Safety. The~~
31 ~~Department of Motor Vehicle Safety shall then issue a certificate of title, which shall be~~
32 ~~free and clear of all liens and encumbrances.~~

33 ~~40-11-8.~~

~~The clerk of the court shall retain the remaining balance of the proceeds of a sale under Code Section 40-11-6, after satisfaction of liens, security interests, and debts, for a period of 12 months; and, if no claim has been filed against such proceeds by the owner of the abandoned motor vehicle or any interested party, then he or she shall pay such remaining balance as follows:~~

~~(1) If the abandoned motor vehicle came into the possession of the person creating the lien other than at the request of a peace officer, the proceeds of the sale shall be divided equally and paid into the general fund of the county in which the sale was made and into the general fund of the municipality, if any, in which the sale was made;~~

~~(2) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a police officer of a municipality, the proceeds of the sale shall be paid into the general fund of the municipality;~~

~~(3) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a county sheriff, deputy sheriff, or county police officer, the proceeds of the sale shall be paid into the general fund of the county in which the sale was made;~~

~~(4) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a member of the Georgia State Patrol or other employee of the State of Georgia, the proceeds of the sale shall be paid into the general fund of the county in which the sale was made.~~

~~40-11-9. 40-11-6.~~

~~(a) If a motor vehicle has been left unattended on private property for not less than two days or on public property for not less than three days without the owner or driver making any attempt to recover such vehicle or to leave a conspicuously placed note that such owner or driver intends to return for such vehicle; or, if a conspicuous note was left, if the motor vehicle has been left unattended for not less than five days and if because of damage, vandalism, theft, or fire the vehicle is damaged to the extent that its restoration to an operable condition would require the replacement of one or more major component parts or involves any structural damage that would affect the safety of the vehicle; or if there is evidence that the vehicle was inoperable due to major mechanical breakdown at the time it was left on the property, such as the engine, transmission, or wheels missing, no coolant in the cooling system, no oil in the engine, or burned fluid in the transmission; or if the vehicle is seven or more years old; or if the vehicle is not currently tagged or is not verifiable by the state as to who is the current owner or lienholder of the vehicle; or if the vehicle has been abandoned to a wrecker service by an insurance company and the owner~~

1 following the insurance company's making a total loss payment, then any person removing
2 such vehicle shall within ~~72 hours~~ three business days of removing such vehicle obtain the
3 identity of and address of the last known registered owner of the vehicle, the owner of the
4 vehicle as recorded on the certificate of title of such vehicle, and any security interest
5 holder or lienholder on such vehicle from the local law enforcement agency of the
6 jurisdiction in which the vehicle was located. If the law enforcement agency shows no
7 information on the vehicle, then a request for such information shall be sent to the
8 Department of Motor Vehicle Safety. Within ~~72 hours~~ three business days after obtaining
9 such information, the person removing such vehicle shall, by certified mail or statutory
10 overnight delivery, return receipt requested, notify the registered owner, title owner, and
11 security interest holder or lienholder of the vehicle that such vehicle will be declared a
12 derelict vehicle and the title to such vehicle will be canceled by the Department of Motor
13 Vehicle Safety if such person or persons fail to respond within ten days of receipt of such
14 notice. The commissioner of motor vehicle safety shall prescribe the form and content of
15 such notice. If the registered owner, title owner, or security interest holder or lienholder
16 fails to respond within 30 days from the date of such notice by certified mail or statutory
17 overnight delivery, and if the vehicle is appraised as having a total value of less than
18 \$300.00, the vehicle shall be considered to be a derelict vehicle. The value of the vehicle
19 shall be determined as 50 percent of the wholesale value of a similar car in the rough
20 section of the *National Auto Research Black Book, Georgia Edition*, or if a similar vehicle
21 is not listed in such book or, regardless of the model year or book value of the vehicle, if
22 the vehicle is completely destroyed by fire, flood, or vandalism or is otherwise damaged
23 to the extent that restoration of the vehicle to a safe operable condition would require
24 replacement of more than 50 percent of its major component parts, the person shall obtain
25 an appraisal of the motor vehicle from the local law enforcement agency's auto theft
26 section with jurisdiction in the county or municipality where such vehicle is located. Any
27 person removing a vehicle shall complete a form, to be provided by the Department of
28 Motor Vehicle Safety, indicating that the vehicle meets at least four of the above-stated
29 eight conditions for being a derelict vehicle and shall file such form with the Department
30 of Motor Vehicle Safety and the law enforcement agency with jurisdiction from which such
31 vehicle was removed.

32 (b) Upon determination that a vehicle is a derelict motor vehicle as provided in
33 subsection (a) of this Code section, it may be disposed of by sale to a person who scraps,
34 dismantles, or demolishes motor vehicles, provided that such vehicle may be sold for scrap
35 or parts only and shall in no event be rebuilt or sold to the general public. Any person
36 disposing of a derelict motor vehicle shall, prior to disposing of such vehicle, photograph

1 such vehicle and retain with such photograph the appraisal required in subsection (a) of this
2 Code section and the notice to the Department of Motor Vehicle Safety required in this
3 subsection for a period of three years after its disposition. Such person shall also notify the
4 Department of Motor Vehicle Safety of the disposition of such vehicle in such manner as
5 may be prescribed by the commissioner of motor vehicle safety. The Department of Motor
6 Vehicle Safety shall cancel the certificate of title for such vehicle and shall not issue a
7 rebuilt or salvage title for such vehicle.

8 (c) For purposes of this Code section, the term 'derelict vehicle' shall not include a vehicle
9 which does not bear a manufacturer's vehicle identification number plate or a vehicle
10 identification number plate assigned by a state jurisdiction.

11 (d) Any person who abandons a derelict motor vehicle on public or private property shall
12 be guilty of a misdemeanor and upon conviction shall be fined not more than \$500.00 and
13 shall pay all costs of having such derelict motor vehicle removed, stored, and sold as
14 provided for in this Code section. Notwithstanding any other provision of law to the
15 contrary, such fines shall be disposed as follows:

16 (1) If the ~~abandoned~~ derelict motor vehicle was removed other than at the request of a
17 peace officer, the moneys arising from the fine shall be divided equally and paid into the
18 general fund of the county in which the offense was committed and into the general fund
19 of the municipality, if any, in which the offense was committed;

20 (2) If the ~~abandoned~~ derelict motor vehicle was removed at the request of a police officer
21 of a municipality, the moneys arising from the fine shall be paid into the general fund of
22 the municipality;

23 (3) If the ~~abandoned~~ derelict motor vehicle was removed at the request of a county
24 sheriff, deputy sheriff, or county police officer, the moneys arising from the fine shall be
25 paid into the general fund of the county in which the offense was committed; and

26 (4) If the ~~abandoned~~ derelict motor vehicle was removed at the request of a member of
27 the Georgia State Patrol or other employee of the State of Georgia, the moneys arising
28 from the fine shall be paid into the general fund of the county in which the offense was
29 committed.

30 (e) Any person removing a derelict motor vehicle who fails to comply with the
31 requirements of this Code section or who knowingly provides false or misleading
32 information when providing any notice or information required by this Code section shall
33 be guilty of a misdemeanor.

34 (f) Neither the State of Georgia nor any state agency nor the person removing, storing, and
35 processing the vehicle unless recklessly or grossly negligent shall be liable to the owner of

1 a vehicle declared to be a derelict motor vehicle pursuant to this Code section or an
2 abandoned motor vehicle."

3 **SECTION 2.**

4 All laws and parts of laws in conflict with this Act are repealed.